

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	CASE NO. BK10-82436-TJM
PROFESSIONAL VETERINARY)	
PRODUCTS, LTD.,)	CHAPTER 11
)	
Debtor(s).)	
IN THE MATTER OF:)	
)	CASE NO. BK10-82438-TJM
EXACT LOGISTICS, LLC,)	
)	
Debtor(s).)	
IN THE MATTER OF:)	
)	CASE NO. BK10-82437-TJM
PROCONN, LLC,)	
)	
Debtor(s).)	
VICKY WINKLER, Liquidating Trustee for)	
the Liquidating Trust for the Estates of)	
Professional Veterinary Products, Ltd., Exact)	ADV. PROC. NO. A12-8049-TJM
Logistics, LLC, and ProConn, LLC,)	
)	
)	
Plaintiff,)	
)	
vs.)	
)	
STEPHEN J. PRICE, et al.,)	
)	
Defendants.)	

REPORT & RECOMMENDATION

This matter is before the court on the parties' joint motion to withdraw the reference of this adversary proceeding from the bankruptcy court (Fil. No. 24).

The plaintiff is the liquidating trustee for the bankruptcy estates involved in this case. She is charged with investigating, analyzing, commencing, litigating, compromising, and prosecuting such claims maintained by the debtors as she and the creditors' committee deem prudent and in the creditors' best interests.

The liquidating trustee filed the second amended complaint in this case in January 2013. She alleges claims for breach of fiduciary duty, negligence, negligent misrepresentation, and constructive

fraud by the defendants while they were serving as officers and directors of the debtor companies. This is not considered a core proceeding because these causes of action are not created by any provision of the Bankruptcy Code and they would exist outside of the bankruptcy case. Instead, this is a non-core proceeding, a matter in which a bankruptcy judge does not have authority to render a final determination.

Moreover, these are solely state-law claims, and the defendants have a right to a jury trial. While the bankruptcy court may conduct jury trials, it may not do so without the consent of the parties, and the defendants here do not consent. Even if they did, the due process implications of this court's inability to enter a final judgment outweigh any considerations of convenience or docket management.

For these reasons, I respectfully recommend to the United States District Court for the District of Nebraska that it grant the parties' motion and withdraw the reference of this adversary proceeding to proceed with all further matters.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: February 13, 2013

RESPECTFULLY SUBMITTED,

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:
Christopher D. Curzon
Timothy J. Thalken
Brian J. Koenig
Michael F. Coyle
Donald L. Swanson
U.S. Trustee